

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KAKAMEGA**  
**ELC CASE NO. E004 OF 2024**

**FRIDAH INGATO LIKOKO.....PLAINTIFF**

**VERSUS**

**JOHN SPEKE MONGARE**

**T/A TENDERWOOD INDUSTRIES LTD .....1<sup>ST</sup>**

**DEFENDANT**

**JAPHETH LIKOKO.....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

**Introduction**

1. Before court is a Notice of motion dated 26<sup>th</sup> May 2025 filed by the plaintiff seeking the following orders that;

**a) That this honourable court be pleased to consolidate this matter with Kakamega ELC NO. E008 OF 2025**

**b) That the honourable court be pleased to allow the plaintiff file a further list of documents and witnesses**

**c) That costs of this application be in the cause**

2. The application is anchored on the affidavit sworn on 26<sup>th</sup> May 2025 2025 by the plaintiff. The applicant's case is that this case is related to Kakamega ELC Case No. E008 of 2025 where the plaintiff herein is the 1<sup>st</sup> plaintiff in that case while the defendant herein is the 2<sup>nd</sup> defendant in that case. That the two cases relate to the same suit land being Isukha/ Shirere/6101. That consolidation will save precious judicial time and expenses to be incurred by parties in prosecuting two different cases and will prevent the court from reaching two different decisions on the same issues.
3. He further stated that while this case was pending, a decision was delivered in Kakamega High Court Succession Cause No. 730 of 2010 which ruling the plaintiff wishes to rely upon. That the application is made in good faith. He attached the plaint in Kakamega ELC Case No. E008 of 2025 and the ruling in Kakamega HCC Succession Cause No. 730 of 2010.
4. The application was unopposed.

**Analysis and determination.**

5. The court has duly considered the application. The issues that arise for the court's determination are whether this matter ought to be consolidated with Kakamega ELC NO. E008 of 2025 for hearing and determination and whether the plaintiff should be granted leave to file further list of documents and witness statements.
6. It is trite that where two or more matters are pending in the same court where the same questions of law or fact arise in both cases; where the reliefs sought in both cases arise out of the same transaction or series of transactions; and where the consolidation will not confer undue advantage to one party, consolidation of two or more suits may be ordered by the trial court so as to facilitate efficient and expeditious disposal of disputes at an affordable cost to the parties.
7. In the case of **Joseph Okoyo v Edwin Dickson Wasuna (2014) e KLR** the court cited with approval the case of **Korean United Church of Kenya & 3 Others v Seng Ha Sang (2014) e KLR**, where it was stated as follows;
- “Consolidation of suits is done for the purpose of achieving the overriding objective of the Civil**

**Procedure Act, that is for the expeditious disposal of civil disputes. The main purpose of consolidation of suit is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”**

8. Similarly, in the case of **Law Society of Kenya v The Centre for Human Rights and Democracy, Supreme Court of Kenya, Petition No. 14 of 2013**, the Supreme Court held as follows;

**“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was intended to occasion any disadvantage towards the party that opposes it.”**

9. In the instant case, the applicant states that the facts, parties, issues and subject matter in this suit and in Kakamega ELC NO. E008 OF 2025 are similar although there are more parties in the latter. The law frowns upon filing multiplicity of suits, which is why there is sections 6

of the Civil Procedure Act, which prohibits filing a similar suit on the same issues where a similar dispute is pending. In the instant case, the plaintiff herein is the plaintiff in Kakamega ELC Case No. E008 OF 2025, where the subject matter is the same and apart from addition of parties the parties are the same. No legal justification has been given for filing a second suit in respect of the same dispute.

10. If the plaintiff is unhappy with the suit herein and thinks that he needs a new suit, nothing stops him from withdrawing this suit and proceeding with the new suit. Consolidation is meant to ease determination of disputes and not to convolute them. If two cases filed by the same person over the same subject matter are consolidated, what does it create, a complex suit? Which purpose does the consolidation achieve and how are two plaintiffs by one person supposed to be interrogated, which plaintiff will be superior where there is contradiction.

11. In short apart from creating confusion and convoluting issues, the consolidation herein will not serve any purpose. In addition, no attempt has been made by

the applicant to justify or shed light on the justification for there being two pending similar cases in respect of the same facts, subject matter, parties and issues; in view of the doctrine of *sub judice* which bars a court from proceeding with a subsequent suit when a similar case is pending.

12. The fact that the application is unopposed is not a justification for the applicant not to demonstrate the basis and necessity for consolidation. For a matter to be consolidated with another, the existence of the two suits should be justified and there ought to be a demonstration that the subsequent suit is not *sub judice* and that the two suits arise from similar transactions and raise the same questions of fact and law. For those reasons, the prayer for consolidation is declined.

13. On the prayer for leave to file further list of documents and witnesses, this matter having not been heard, there is no prejudice that may be suffered by the defendant if a further list of documents is filed and if more witness statements are filed and therefore that prayer is allowed.

14. For the above reasons, I allow the application dated 26<sup>th</sup> May 2025 only to the extent that the plaintiff herein is granted leave to file and serve further list of documents and list of witnesses together with witness statements within 14 days of this ruling.

15. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA  
VIRTUALLY THIS 11<sup>TH</sup> DAY OF FEBRUARY 2026  
THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM**

**A. NYUKURI  
JUDGE**

**In the presence of;**

Mr. Wandala for plaintiff/applicant

Mr. Magina for defendant/respondent

Court Assistant- Delphine